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* IN THE HIGH COURT OF DELHI AT NEW DELHI

% DATE OF DECISION: 2nd NOVEMBER, 2006.

+ L.A. APP. NO. 196/2006

MAN SINGH Appellant
! Through: Mr. I.S. Dahiya, Mr. S.Chaturvedi and
Mr. Deepak Khosla with Ms. Sunita Jain,
Advocates.

versus

\$ UNION OF INDIA & ANR. Respondents
^ Through: Mr. Sanjay Poddar for LAC.
Mr. Gaurang Kanth for Mr. Deepak Pathak for
respondent DSIDC.

WITH

L.A. APP. No.442/2006, L.A. APP. No. 456-59/2006 & CM 9729/2006, L.A. APP. No.464/2006, L.A. APP. No.495/2006, L.A. APP. No.496/2006, L.A. APP. No.497/2006, L.A. APP. No.507/2006, L.A. APP. No.508/2006 & CM 10961/2006, L.A. APP. No. 509/2006 & CM 10962/2006, L.A. APP. No.510-17/2006 & CM 11007/2006, L.A. APP. No.524/2006, L.A. APP. No.526/2006, L.A. APP. No. 527/2006, L.A. APP. No. 544/2006, L.A. APP. No. 545-49/2006, L.A. APP. No. 579/2006 & CM 11710/2006, L.A. APP. No. 633/2006, L.A. APP. No. 636/2006 & CM 13162/2006

CORAM:

* HON'BLE MR. JUSTICE MUKUL MUDGAL
* HON'BLE MR. JUSTICE J.P. SINGH

1. Whether Reporters of local papers may be allowed to see the judgment? No.
2. To be referred to the Reporter or not? No.
3. Whether the judgment should be reported in the Digest? No.

L.A. APP. NO. 196/2006 with connec. matters

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*** Mukul Mudgal, J. (Oral)**

1. In the above referred appeals under Section 54 of the Land Acquisition Act, 1894 (hereinafter referred to as "the Act") common questions of law and facts arise. Therefore, all these appeals are being disposed of by this common judgment. The notification under Section 4 of the Act was issued on 15.11.1996 and the declaration under section 6 of the Act was made on 21.11.1996. Thereafter award No.01/97-98 was drawn by the Land Acquisition Collector. The Land Acquisition Collector placed the acquired land in two categories. The land placed in category A was assessed @ Rs.1,86,500 per bigha and the land placed in category B was assessed @ Rs. 1,61,500/- per bigha. The appellants (claimants) were not satisfied. Consequently, reference under Section 18 of the Act came up before the learned Addl. District Judge, Delhi, who enhanced the rate of land in category A to Rs.2,41,452/- and category B to Rs.2,01,452/-. The claimants as well as the Union of India challenged the said judgment. The High Court set aside the judgment and remanded the matter to the Addl. District Judge, Delhi, with directions to decide the matter afresh. This time the successor learned Addl. District Judge dismissed the reference with the result that the appellants (claimants) were back to square one. Hence, the present appeals.

2. It is contended by learned counsel for the appellants that entire evidence led by the appellants before remand and after the remand has not been properly appreciated by

the learned Addl. District Judge. Moreso, no cogent evidence was produced on behalf of the respondents. There was hardly any evidence worth considering before the Land Acquisition Collector for categorizing the land. It is stated that the lands were under cultivation. The deductions made by the LAC for development of the land were based on imagination. There were no pits (khaddas) and no removal of soil. Moreover, the lands were not acquired for the purposes of agriculture but for raising construction. It is argued that the value of the land in the adjoining villages was not considered, specially of village Bhorgarh on the basis of which the predecessor learned Addl. District Judge had enhanced the value of category A land to Rs.2,41,452/- per bigha and of category B land to Rs.2,01,452/- and the said learned Additional District Judge had relied upon the judgment of the High Court regarding village Bhorgarh and that the Hon'ble Supreme Court of India in Om Prakash (deceased) through LRs v. UOI & Anr (2004) Vol. VIII (AD) SC 37 held that Rs. 82,255/- per bigha was fair market value for all categories of land in village Bhorgarh. The learned counsel for appellants have also relied upon the case titled Bhim Singh v. State of Haryana (2003) 10 SCC 529 wherein it has been held that market value earlier fixed can also be taken into consideration for determining the market value of the land subsequently.

3. There is no dispute that exactly similar appeals pertaining to same notification, declaration, award and the final taking over of the possession of the acquired land in

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village Bawana have been disposed in L.A. Appeal No.866/2005 titled **Mahender Singh v. UOI & Ors.** decided on 11.5.2006 and the issues involved in the present appeals are covered by the judgment. We have gone through the said judgment in which all the aspects have been dealt with extensively and the entire evidence produced before the Addl. District Judge has been re-appreciated. Reliance has been placed on several High Court and Supreme Court judgments and the appeals have been allowed.

4. We reaffirm the said judgment and allow these appeals in terms of the said judgment and direct that the enhanced amount, interest, solatium and other statutory payments in accordance with the judgment in **Mahender Singh v. UOI & Ors., (supra)** be made. However, the appellants shall not be entitled to interest for the period of delay, if any, in filing the appeals i.e. for the period commencing from the date of the impugned judgment till the date of filing of the appeals excluding 90 days. Payments be made not later than 15th December, 2006.

5. With the above directions, these appeals are disposed of along with the applications. A copy of the judgment in **Mahender Singh v. UOI & Ors.** (supra) be placed in this file. Decree sheets be prepared accordingly.


MUKUL MUDGAL, J


J.P. SINGH, J

NOVEMBER 02, 2006
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L.A. APPL. Nos. 785/2005, 786/2005, 787/2005, 788-90/2005, 791/2005, 800/2005, 867/2005, 868/2005, 869-72/2005, 874-78/2005, 1-4/2006, 29-30/2006, 31-33/2006, 99-103/2006, 188/2006, 192/2006, 61/2004, 76/2004, 873/2005, 60/2006, 57/2006, 61-70/2006, 71/2006, 72-76/2006, 77/2006, 78-81/2006, 82/2006, 83/2006, 84-93/2006, 124-131/2006, 208/2006, 209-20/2006, 221/2006, 222/2006, 223-28/2006, 229-32/2006, 233-34/2006, 235-38/2006, 239/2006, 240-42/2006, 243-52/2006, 253-55/2006, 256-59/2006, 260-61/2006, 262/2006, 263/2006 and RFA 232/2003

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CORAM :

HON'BLE MR. JUSTICE SWATANTER KUMAR
HON'BLE MR. JUSTICE S.L. BHAYANA

1. Whether reporters of local paper may be allowed to see the judgment?
2. To be referred to the reporter or not?
3. Whether the judgment should be referred in the Digest?

yes
yes

SWATANTER KUMAR, J.

1. By this common judgment, we would dispose of the above-mentioned appeals as they arise from a common judgment giving rise to common questions of law and fact. The necessary facts are that a notification under Section 4 and 17(1) of the Land Acquisition Act, 1894 (hereinafter referred to in short as 'the Act') was issued on 15.11.1996 vide notification no. F.10 (39) 96/L&B/LA for acquisition of lands measuring about 3604 bighas and 18 biswas situated in the revenue estate of village Bawana, Delhi. These lands were acquired for a public purpose namely for "Shifting of Industrial area from City area of Delhi/New Delhi", in furtherance to which Section 6 declaration was issued on 21.11.1996. The respondents took the possession of the acquired land measuring about 3549 bighas & 19 biswas on 18.12.1996 and a *Kabza Karwai* report was prepared for the same. It was mentioned in that report

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that *rabi* crop was standing on the above acquired lands. The Land Acquisition Collector rendered the award bearing no. 1/97-98 on 4.7.1997 dividing the entire acquired lands into two blocks/categories being Blocks A and B. In the former i.e. Block A, the lands consisted of agricultural lands, while the latter consisted of the lands which had pits/*gadhas*. After having recorded the evidence, the Collector fixed the value of the acquired lands as follows:-

"Block A	-	Rs. 1,86,500/- per bigha
Block B	-	Rs. 1,61,500/- per bigha"

2. Lands measuring about 1887 bighas was taken in Category A and 1701.18 bighas was taken in Category B and the owners of the lands were paid compensation accordingly. As stated, the basis for placing of lands measuring 1701.18 bighas of land out of the acquired lands, in the Category B was that the same consisted of *Bhatta* (Brick Kiln), which included *Bhatta Grunds*, *gadhas* upto 3 feet from which earth had been taken for making bricks. The claimants were dissatisfied from the award of the Collector and preferred petitions under Section 18 of the Act. In the case of Chaiju Ram vs. Union of India and another, LAC No.35/2001, the learned Reference Court vide its judgment enhanced the compensation payable to the claimants while maintaining the

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categorisation of the lands and awarded the compensation @ Rs.2,41,452/- per bigha for Block A lands and @ Rs.2,01,452/- per bigha for Block B lands. While deciding this case, the Reference Court had also relied upon the judgment of the High Court in the case of Jai Lal (dead) through LRs vs. Union of India 2002 (62) DRJ 227. Against this judgment of the Reference Court, the Union of India preferred appeals praying that the judgment of the Court be set aside as the compensation awarded to the claimants was unreasonably high while the claimants preferred appeals against the same judgment praying for a further enhancement of the compensation awarded to them. Both these appeals were disposed of by a judgment of this Court in the case of Chajju Ram (D) through LRs vs. Union of India and Ors. RFA No. 522/2002, decided on 20.11.2003 whereby judgment of the Reference Court was set aside by the High Court and the case was remanded to the Reference Court with the following observations and directions:-

“Before us it was submitted that the claimants have not led any evidence with regard to yield. Land which was sought to be acquired was agricultural land and the yield has a bearing on determining the amount of compensation. It is also required to be noted that over and above the yield, there are other aspects which are required to be taken into consideration. On behalf of the claimants strong reliance was placed on the judgment of Division Bench in the case of Jai Lal (dead) through LRs vs. Union of India reported in 2002 (62) DRJ 227. As against that on behalf of the

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Union of India reliance was placed on a subsequent judgment delivered by the Division Bench of this Court on February 7, 2003 in RFA 464/88 entitled Union of India vs. Amar Singh wherein the Bench had an occasion to examine the earlier decision which we have just referred.

In a matter of land acquisition where the agricultural lands are sought to be acquired in the opinion of the Court there must be evidence with regard to yield. On the basis of a small parcel of land it would not be correct to say that the court must determine the amount. In view of this request was made by the claimants the claimants are the farmer and they should be given an opportunity in lead evidence in this behalf. No doubt the claimants were assisted by the lawyers but it does not mean that the farmers should not be given an opportunity to lead the evidence on material aspect. Union of India objected for grant of such an opportunity. It is stated that it would amount to filling the gaps. Looking to the peculiar facts and circumstances of the case and in order to the complete justice this Court is of the opinion that opportunity should be given to claimants as well as the acquiring authority to lead evidence in this behalf.

It is in view of the opinion that we have expressed hereinabove, the appeals preferred by the claimants as well as the acquiring authority are required to be disposed of with the direction to the Reference Court to complete the exercise of regarding evidence and deliver fresh award within a period of six months. At the same time if the adjournments are sought for and granted by the Reference Court, then the time shall stand automatically extended to the extent adjournment is granted.

On behalf of the Union of India it was submitted that they have deposited the amount in the Court in most of the cases and in some of the cases amount has been withdrawn. We are told that the claimants who have withdrawn the amount, it is on furnishing a bank guarantee. It is in view of this, we direct that bank guarantees shall stand extended till

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period of six months expires from the date of decision that may be made by the Reference Court. It goes without saying that if the amount is reduced by the Reference Court. The claimants who have taken the money shall have to reconstitute without any demur and at the same time if there is change in the amount in favour of the claimants, the amount will have to be paid by the Union of India. In view of what is stated hereinabove, the award made by the Reference Court is set aside with the direction to permit the parties to lead the evidence taking into consideration the fresh evidence recorded as well as evidence already there and to decide the reference in accordance with law.

At the request of learned counsel for the parties we direct that the matter be listed before the Court concerned on 5th December, 2003. Advocates shall appear before the Court and shall ensure that they will cooperate in hearing and disposal of the matter. No fresh notice will be issued to the parties in view of this arrangement. Trial Court record be sent back forthwith.

Sd/-
CHIEF JUSTICE

November 20, 2003
HP

Sd/-
A.K. SIKRI, J."

3. The parties led further evidence, oral as well as documentary as per the order of remand. Earlier reference being LAC NO. 111/2000 was renumbered as LAC No. 312/2003 and vide judgment dated 31.3.2006 the Reference Court declined any enhancement to the claimants and maintained the award of the Collector in all its aspects.
4. The learned counsel appearing for the various appellants while

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arguing the present appeals referred to the facts and records of L.A.Appl. No. 866/2005 titled as Mahender Singh vs. Union of India and Ors.; L.A.Appl. No.188/2006 titled as Ram Her vs. Union of India and Ors. and L.A.Appl. No. 192/2006 titled as Het Ram vs. Union of India and Ors. which arise from LAC Nos. 213/2003, 392/2003 and 384/2003 [LAC 117/2001 (old)]respectively.

5. The appellants Het Ram, Ram Her and Mahender Singh owned and possessed lands, in their respective shares as stated in the award relating to the acquired lands. Their lands were acquired vide notification and possession taken on the dates as afore-indicated. All these claimants led evidence in their respective cases but the main evidence was recorded in the case of Ram Her and Het Ram.

6. Before we discuss the effect of oral and documentary evidence led by the parties before the Reference Court, we may refer to the challenges made by the appellants to the impugned judgment, which are as follows:-

- (a) The Reference Court has failed to appreciate the evidence on record in its correct perspective and thus, has fallen in error of law and fact, both.
- (b) The Reference Court could not have brushed aside the entire evidence led by the complainants in relation to the agricultural yield particularly in view of the order of remand passed by the High Court, for the reasons

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which are neither plausible nor can be supported in law.

(c) The Jai Lal's case was squarely applicable to the facts and circumstances of the present cases and the court, thus, while relying upon the said judgment ought to have given 12% compounding increase for the intervening period and then determined the market value of the land payable to the owners in light of this judgment and there was no occasion for the Reference Court to dismiss the reference petitions.

(d) Affirming the categorisation made by the Collector was again an error of both law and fact committed by the Reference Court as there was no evidence to support the plea of categorisation. On the contrary, the owners had led sufficient evidence which would entitle them to receive uniform rate of compensation for the entire acquired lands.

(e) With reference to the Master Plan, Ex.M1, it is argued that the value of the land should have been assessed with reference to the potential of the land being residential and commercial, entitling the claimants to grant of higher compensation.

(f) In any case and in all events, the claimants would have been entitled to interest on solatium as well as the additional value for a period of 7 ½ months and interest thereupon. The learned Reference Court, thus, has completely fallen in error, even of calculation and the judgment is liable to be allowed to that extent.

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7. We may take the last point first. In the award dated 4.7.1997, the Collector, while assessing the market value of the land referred to the fact that the claim made by the appellants @ Rs. 50 lacs per acre and above was exorbitant and while referring to the policy announced by the Government, which was made effective from 1.4.1997 in the financial year 1997-98 noticed that the price of agricultural land was @ Rs.10 lacs per acre for the acquired agricultural lands. Referring to the earlier value fixed by the Government which was @ Rs.4.65 lacs per acre for the policy which came into effect on 27.4.1990 and gave increase @ 11.50% per annum compounded, in coming to the value of the land for Block 'A' @ Rs.1,86,500/- per bigha. It may be noticed that this value was fixed upto the financial year 1996-97 in terms of the award, obviously, not giving any benefit to the claimants from 1st April to 15th November, 1996 when the notification in relation to the acquired land was issued. This claim of the claimants is fully justified and the claimants were entitled to the increase for these 7 ½ months @ 11.5%.

8. The learned counsel appearing for the respondents very fairly stated that the claimants would be entitled to interest on solatium and also on this increased value, if given by the court. This particular claim of the claimants need not detain us any further, as it appears to be an arithematical error in the award of the Collector as well as judgment of

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the Reference Court. This similar point was dealt with by the Court at some length and decided in favour of the claimants in a recent judgment pronounced in the case of Gajraj Singh vs. Union of India L.A.Appl. No. 91/2005 decided on 27.4.2006. In addition to what we have stated above and for the reasons recorded even in that judgment, we will allow both these claims of the claimants. The claimants would thus be entitled to increase in terms of the value @ 11.5% for a period of 7 ½ months. They will also be entitled to interest on this sum as well as the solatium payable to the claimants in accordance with law.

Agricultural Yield

9 Initially it was argued on behalf of the claimants that they had placed sufficient evidence on record to show that they had an income of nearly 2.45 lacs per year from the agricultural produce of the acquired lands and while applying the multiplier of 16, they would be entitled to compensation @ Rs. 3 lacs per bigha. Reference in this regard was made to the statements of Sh. Ved Prakash Sharma (PWR-1), Sh. C.P. Gandhi (PWR-2), Sh. Ajay Kumar Tyagi (PWR-3) and Mr. Irfan (PWR-4) which related to the nature, birth of the produce, sale and the rates prevailing in the market for sale of such agricultural produce. However, later during the course of arguments, it was stated by the learned Senior Counsel

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appearing for the claimants that they do not press this argument any further and do not claim enhancement of compensation on the basis of agricultural yield, but subject to the other pleas taken by them. Accordingly, we do not find it necessary to discuss this aspect in any further detail as the plea is given up before this Court.

Is the Categorisation of land justified :-

10. As we have already noticed that out of the total acquired land measuring about 3549 bighas and 19 biswas, 1887 bighas was treated as lands falling in Block 'A' while 1701.18 bighas was treated as Block 'B' land giving them different compensation. This categorisation of land was based upon the following conclusion arrived at by the Collector, as stated in the award of the Collector:-

"The land under acquisition is agricultural land and is being used for agriculture, as well as Bhatta purpose. A small acre is also having built up structures and used for other purposes. Details of the same have been discussed under the heading 'Structure'. The land which is being used for Bhatta purpose is having 'Gadhas' upto three feet from which earth has been taken out for making bricks. This also includes 'Bhatta Grund'. Hence, for the purpose of assessing the market value, land can fairly be divided into two blocks. One block will consist of level land under cultivation and built up area total measuring 1887 bighas 12 biswas categorised as Block 'A' and second block will consist of 'Gadhas' and 'Bhatta Grund' measuring 1701 bighas in biswas categorised as Block 'B'."

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11. The above findings of the Collector are based on what evidence or record is not reflected in the entire award. It cannot be disputed that at the time of the acquisition of the land, survey of the acquired land is conducted wherein every details in relation to the acquired land are expected to be noticed. This report is the very foundation on the basis of which any authority or court can come to the conclusion as to what was the user/state of the land at the time of acquisition. Unfortunately, in the present case, neither such a report appears to have been made available to the Collector nor was it produced before the Reference Court despite a specific plea being led by the claimants in that regard. These are findings of fact and must be recorded on the basis of some oral or documentary evidence which is maintained in the normal course of business of Departments of the State. In the event, there is no documentary or oral evidence to support such a finding it would certainly call for judicial correction. The Collector in the entire award does not even notice that he had the occasion to visit the acquired land or any part thereof during the acquisition proceedings. Thus, we have to examine this finding of fact on the basis of the evidence produced before the Reference Court. It is not in dispute that possession of the acquired lands were taken by the authorities on 18.12.1996. The

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possession thereof was taken vide *kabza karwai* (possession report) dated 18.12.1996 which was signed by as many as 15 persons from different Departments who had taken the possession. It included officers of DDA, Land Acquisition Departments, Officers of Govt. of NCT of Delhi, Engineering Department, Land & Building department and probably a number of them from number of other departments. This report is exhibited as Ex. PWR-7/A. In the very opening lines of this report, it is stated that "The Officers mentioned therein had reached the spot and had taken possession of the land." This report was stated to be correct as per the position existing on the site. Again, at the end of the report it was recorded that possession of a total area of 3549 bighas 19 biswas of land in which rabi crop was standing was taken along with the standing rabi crop and from all sides the land was marked by *nishan dei*. This document is expected to give the correct position existing on site on the date the possession of the acquired land was taken. In this possession report, there is no reference to brick kilns, brick *gadhas*, or *gadhas* of the level of 3 feet or more. In the copy of the *khasra girdhwaris* for the year 1996-97, 1997-98 in relation to the part of the land, there is no indication again that there was any brick kiln on the acquired land or part thereof.

12. Ram Niwas, one of the claimants and successor in interest of Chajju Ram (deceased) was examined in the Court as PW4. Besides

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making a lengthy statement in regard to the agricultural yield, this witness clearly stated that he was owner of the land measuring about 60 bighas falling within the revenue estate of Village Bawana which was acquired by the notification in question and the entire land was very fertile land. He even stated that in the crop season wheat and mustard used to be grown in addition to vegetables etc. He also stated that officials of the Horticulture Department used to visit their lands and make note of the crops existing on the site. His cross-examination was conducted by the counsel appearing for the respondents on different dates running into number of pages but not even a suggestion was made to this witness that his entire land, or part thereof, or the land surrounding his lands in the revenue estate of Village Bawana were being used for quite sometime for making brick kilns and/or there were brick kilns on the acquired lands.

13. PWR-7, Ramesh Kumar Patwari, in his examination-in-chief stated as under:-

"In the survey, it is seen as to how much land the claimant had and how much trees are standing thereon. Tube well, kotha, boundaries are verified. Whether the land is depressed (at low level) or levelled one is also verified. During the survey, the record of Patwari, sizra is with the officials who carry out the survey. The record is taken from Halka Patwari. During the survey, at times Patwari goes and at times he sends girdhwar also. Survey report is submitted to LAC.

Survey in respect of village Bawana is not in the record brought by me today (LAC record).

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Possession proceedings and Naksha Muntzamin are in the LAC file. Copy of the possession report is Ex.PWR-7/A. I was never posted in fields during my tenure as Patwari."

14. In his cross-examination he stated that he cannot say as to why there were pits in the lands of the village Bawana and he stated that he was not aware about the existence of brick kilns on the acquired lands.

15. PWR-6, Surender Kumar, Junior Engineer, DSIDC, Corporation for the benefit of which the lands in question were acquired, appeared as a witness. He proved on record a certificate dated 17.12.2004 issued by the Executive Engineer being Ex.PWR-6/A. According to him there were five sectors in which development was carried out and he was not fully aware of the requirements of the area. The five sectors related to different villages and the lands in the revenue estate of Village Bawana fell in one or two sectors. The certificate of expenditure and details of expenditure Ex.PWR-6/B, related to the entire project of DSIDC. Of course, in his cross-examination he also stated that it cannot be stated as to how much earth had been filled for used for levelling the same in a particular khasra number.

16. Another important witness who was examined by the claimants was Sh. Ved Prakash Sharma, PWR-1, an Assistant from the Horticulture Department, Alipur, BDO Office, Delhi, who stated that their

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department, surveys and advices the farmers as to how to improve their crops. In that block there were 78 villages, and Bawana was stated to be one of them. Under the general survey conducted by the Department they found that vegetables were grown on the land. He had visited the Village Bawana in the year 1996-97 and all vegetable crops mentioned were cultivated in the Village in that year and certificate Ex.PWR-1/A was issued by the Department which was duly proved by the witness. Even in the cross-examination of this witness, no effort was made to lay any foundation to justify categorisation of lands. In fact, no suggestion was made to him that during the year 1996-97 or even prior thereto brick kilns were existing and there were *gadhas* upto 3 feet deep on the lands falling in the category 'B'.

17. Above is the documentary and oral evidence led by the claimants before the Reference Court. On the other hand, for the reasons best known to them, the respondents chose to withhold from the Reference Court all the relevant evidence. They opted not to examine any witness or produce any documents before the Reference Court. The survey report which ought to have been prepared prior to the acquisition was not produced either before the Reference Court or even before this Court. These are the documents which are in power and possession of the respondents and are maintained by them during the normal course of their

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business in completing the acquisition proceedings. In the event a party withholds the best evidence in its power and possession, the court would normally draw adverse inference against the party withholding the evidence. The learned Counsel appearing for the respondents argued that the onus was on the claimants and it was not obligatory on the part of the respondents to produce any evidence. This argument is based on misconception of law and fact. Certainly the claimants approached the court for enhancement of compensation awarded to them by the Collector and the primary onus was upon the claimants. But, at the same time, Union of India supports the award of the Collector and there is an implied onus upon them to show to the satisfaction of the Reference Court that the award should be affirmed by the Court on facts as proved before the Collector and the law settled by the Court. The concept of onus shifts from one party to the other keeping in view the facts and circumstances of the case. It cannot be stated as an absolute proposition of law that the respondents particularly the Union of India had no onus to discharge and is not expected to lead any evidence before the Reference Court. The general and broad principle of evidence is that a party which affirms has the *onus probandi*. Another test is which party would fail if no evidence was led on a factual averment. In the present case, the claimants had led sufficient documentary and oral evidence including the witnesses of

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various government Departments to show that the lands in question were agricultural lands and the categorisation of land was not justified. It was the argument of the Union of India that there were pits and *gadhas* in the lands and certain persons were running the brick kilns on the acquired lands. According to them this fact was correctly noticed in the award of the Collector. Certainly according to the government witnesses, in the year 1996-97 they had inspected the lands in question of Village Bawana and there was agricultural activity going on. PWR-6, Surender Kumar, proved the certificate Ex.PWR-6/B which showed that the filling of earth was done in five sectors, the area falling in Village Bawana was part of it and the total expenditure in this regard was Rs.75 lacs. As far as Village Bawana was concerned, nothing was mentioned in the entire project expenditure report upto 31.3.2004. If there were 3 ft. deep *gadhas* or ditches in the acquired lands and the earth had been spoiled by running of brick kilns, then this certificate would have shown the expenditure incurred by the Corporation for levelling the earth. No suggestion in this regard was made to this witness in his cross-examination. In fact, none of the government witnesses who had appeared as witnesses of the petitioners, were even given a suggestion in their cross-examination that there were brick kilns being run on the acquired lands or there were filling up of *gadhas*/pits. Thus, as far as the respondents are concerned, their

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averments that part of the acquired land in the revenue estate of Village Bawana was of inferior quality is a plea supported by no evidence and the Collector made no attempt to justify his findings with reference to any records maintained by the Acquisition Department itself in normal course of its business.

18. The determination before the Reference Court would have a normal consequence of placing onus on parties and primary onus being on the claimants. The Govt. has best evidence in its power and possession i.e. the sale deeds executed in that area, the development plans, the policy of the Govt. in that regard considering the valuation of the land. The concept of onus on parties is equally applicable to the proceedings before the Reference Court. The Supreme Court in the case of Land Acquisition Officer & Mandal Revenue Officer Vs. V. Narasaiah (2001) 3 SCC 530 held as under :-

“13 . If the position regarding admissibility of the contents of a document which is a certified copy falling within the purview of Section 57(5) of the Registration Act was as adumbrated above, even before the introduction of Section 51-A in the LA Act, could there be any legislative object in incorporating the said new provision through Act 68 of 1984? It must be remembered that the State has the burden to prove the market value of the lands similarly situated which were transacted or sold in the recent past, particularly those lands situated in the neighbouring areas. The practice had shown that for the State officials it was a burden to trace out the persons connected with such

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transactions mentioned in the sale deeds and then to examine them in court for the purpose of proving such transactions. It was in the wake of the aforesaid practical difficulties that the new Section 51-A was introduced in the LA Act. When the section says that certified copy of a registered document "may be accepted as evidence of the transaction recorded in such document" it enables the court to treat what is recorded in the document, in respect of the transactions referred to therein, as evidence.

14. The words "may be accepted as evidence" in the section indicate that there is no compulsion on the court to accept such transaction as evidence, but it is open to the court to treat them as evidence. Merely accepting them as evidence does not mean that the court is bound to treat them as reliable evidence. What is sought to be achieved is that the transactions recorded in the documents may be treated as evidence, just like any other evidence, and it is for the court to weigh all the pros and cons to decide whether such transaction can be relied on for understanding the real price of the land concerned.

(emphasis supplied)"

19. Thus, it would not be correct even to argue that in cases of the present kind no onus lies upon the Union of India. Before the Reference Court are required to discharge their respective onus, of course, the primary onus is always on the claimants.

20. Categorisation of land is an exception to the general rule of awarding uniform compensation for the acquired lands. This has to be proved, as a matter of fact, and it would be impermissible to infer such factual presumptions, particularly when the evidence led by the claimants stares the respondents in face. The evidence led by the petitioner is

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primarily based upon the official records maintained by different departments of the government. The differentiation in the nature and use of the lands would be a condition precedent to the application of the principle of categorisation. The finding of the Collector is supported by no evidence while according to the statement of the claimants and their witnesses which is supported by documentary evidence, the acquired land was being used for agricultural purposes, no expenditure was incurred on filling/levelling of the earth by the Corporation in the revenue estate of Village Bawana uptill 2004, the claimants were having agricultural income from the acquired lands even upto the year 1996-97 and the Collector in his wisdom neither visited the site nor based his findings on any revenue records i.e. *khasra girdhwari*, survey reports, *jamabandi* etc. In face of this, on what basis the Reference Court has upheld the findings of the Collector in regard to categorisation, is a finding which cannot be sustained by this court.

21. The Reference Court in the impugned judgment has only referred to the judgments of the Supreme Court in this regard and has completely ignored the entire evidence, mentioned by us in the earlier part of the judgment. Applicability of categorisation as a concept can hardly be question of any dispute in view of the judgment in the cases of Ludhiana Improvement Trust vs. Brijeshwar Singh Chhal & Another

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(1996) 9 SCC Page 188 and Executive Director vs. Sharad Chandra Bisoi & Another (2000) 6 SCC 326. But what is important is the application of these principles to the facts and circumstances of a given case. The enunciated principles of law are to be applied to the facts of a given case. A court must satisfy itself that established principles of *ratio decidendi* is completely satisfied to the facts of the case in hand.

22. For the reasons afore-recorded, we accept this plea of the claimants and hold that there is no justification on record for categorisation of lands into Groups A and B. The claimants have reasonably, by admissible and cogent evidence on record, established the plea that all the claimants should be granted uniform compensation for acquisition of their lands.

LOCATION & POTENTIAL OF THE ACQUIRED LAND

23. In every case of land acquisition, this aspect of the case had a definite significance. The location and potentiality of the land not only helps the Court in determining the fair market value of the land at the time of acquisition but also guides the court in determining the comparable instances, which might have been produced by the parties during the course of proceedings. PW-4 Ram Niwas stated the out of 115 bighas of land belonging to his father in the revenue estate of Village

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Bawana, only 60 Bighas of land have been acquired. The same was fertile land. He also specifically stated that he was growing agricultural crops in the land in question. In his lengthy cross-examination, he specifically stated that towards the east of this village there was village Poot Khurd, towards North East is the village Khera Khurd, towards north is Village Sanot and towards West is Village Daryapur. He also stated that the land in the revenue estate of Village Holambi Kalan touches part of the boundary of village Bawana. The land of both the villages was stated to be fertile. According to PWR-6, Mr. Surender Kumar, Junior Engineer, DSIDC, the land of village Bawana fell in one or two sectors out of the 5 sectors, which had been taken up for development by the corporation i.e. they were part and parcel of the larger development scheme.

24. Counsel appearing for the appellant have placed heavy reliance upon Exh.M-1, which is the Master Plan notified by the DDA under the provisions of DDA Act, 1957. On the strength of this document, it is argued that besides being part of larger development of scheme, the land was earmarked and had the potential of industrial and commercial area, which was the permissible use for which the land was to be acquired. The location of the land is that it is surrounded by land of other villages, which again is a part of the development scheme. The acquired land, therefore,

has great potential of residential, industrial and commercial area even as on the date of acquisition as the Master Plan was declared in the year 1990 and it was a projected development of Delhi even as in the year 2001. On the other hand, learned counsel appearing for the respondent argued that this is merely a projected programme and is inconsequential for determining the fair market value of the land as on the date of acquisition.

25. Reference to the terms of Exh.M-1 could be appropriate before we discuss the merit of this contention. The relevant portions of Exh.M-1 read as under :-

"RURAL AREA

The rural area of Delhi being on the periphery of major metropolis has a special significance. The households in the rural areas of the union territory have higher level of education and income compared to rural areas in the adjoining states. Rural areas of Union Territory of Delhi is also attracting migrants, 20 per cent of rural Delhi households are migrant households, mainly from Haryana and Uttar Pradesh. The area needs to be provided with a reasonably high level of infrastructure and good road linkages with the city.

GROWTH CENTRES

Based on the population, its growth rate and road linkages, five villages have been identified for the location of major health facilities and markets. To cover the deficiencies of lower level health facilities, schools and location of rural industry another six rural settlements

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have been identified with the details as under :

Bakhtawapur : Hospital, health centre, dispensary, vet. Hospital, rural industrial area and commercial centre.

Bawana: health centre, rural industrial area and commercial centre.

Jharoda Kalan: hospital, dispensary, vet hospital, rural industrial area and commercial centre.

Dhansa: dispensary, rural industrial area and commercial centre."

"The following stretches of roads interconnecting these important settlements would require upgrading:

- | | | |
|-----|---|-----------|
| (a) | G.T. Road to Bakhtawarpur.
G.T. Road to Bawana | 15 Km. |
| (b) | Bawana to Ghoga to Najafgarh,
Bawana to Qutab Garh, Najafgarh
to Jharoda Kalan to Rohtak Road | 27
Km. |
| (c) | Najafgarh to Gomanhera | 15
Km |
| (d) | Najafgarh to Gommanhera,
Kahanjawala to Qutab Road,
Road No.50 So Bakhtawar pur | 32 Km. |

Each individual settlement would require improvements in water supply and other facilities...."

"These plans for zones (divisions) A to H shall

be published as soon as may be, after the Master Plan for Delhi (Perspective-2001) is notified within a maximum period of 3 year, and would have the same status as the Master Plan for Delhi. The zonal (divisional) plans for zone J to P shall be prepared as per the development needs. The zonal (divisional) plans of the area shall be prepared under Section 8 and processed under Section 10 and simultaneously the modification of the land use shall be processed under Section 11(A) of Delhi Development Act. Already approved sub-zonal (earlier named zonal) plans, in conformity with the Master Plan shall continue to be operative. In the absence of zonal plan of any areas the development shall be in accordance with the master plan."

26. It may be noticed that in terms of Notification issued by the Government under Section 4, for acquiring the land in question, it was clearly stated that the land is being acquired for a public purpose namely for shifting of industrial units from city of Delhi/New Delhi at public expense. This notification was clearly in consonance and conformity with the provisions of the Master Plan Exh.M-1 wherein the land of Village Bawana were to be used for health centre, rural industrial area and commercial centres. This was a declared future potential of the land as in the year 1990. By way of Gazette Notification, every person is expected to know that the lands fallen in the revenue estate of Village Bawana were to be used for these purposes. The development plans were prepared, which thereafter resulted in issuance of notification under Section 4 of the Act. The provisions of Master plan make it obligatory upon the

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concerned authorities to develop the area in terms of Master Plan even if there was no zonal plan notified by the DDA as contemplated under Section 11A of the DDA Act. The land was being used for agricultural purpose and that fact can hardly be disputed in view of the voluminous evidence led by the claimants. This is the claimant's position on the basis of agricultural yield.

27. In regard to potential and location of land, reference to recent judgment of this Court in the case of Gairaj Singh Vs. Union of India & Another (LA APP. No. 91/2005 decided on 27th April, 2006) would be relevant wherein the concept of potential and location with reference to Master and Zonal Plans of Delhi was discussed at great length in relation to acquisition of land in Village Holambi Kalan. The Court held as under:-

“It is a settled proposition of law that value of the acquired land must be determined keeping in view the factors spelled out in Section 23(1) of the Act and with reference to the material on record with some element of conjectures and guess work. (refer P. Ram Reddy and others v. Land Acquisition Collector, Hyderabad, Urban Development Authority, Hyderabad and others (1995) 2 SCC 305). In this case, the Supreme Court even permitted the compensation to be computed on the basis of a hypothetical lay out of building plots similar to those sold. The court cannot ignore the fact that the acquisition of land under the provisions of the Act, is a concept of compulsive acquisition. It is an unilateral act of acquiring property belonging to the others as opposed to mutual agreement for transfer or vesting of property by a seller in favour of a

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purchaser. The Government has been vested with the power of acquisition and this process of acquisition has been held to be constitutional. But still the fact remains that the deprivation of property of a citizen is result of eminent domain of the State permitting compulsory acquisition of property. It is not only where the Government takes the property of a citizen but also deprives him of his livelihood. To great extent, the Legislature has protected the interest of a land owner whose land is being acquired by introducing various amendments to the provisions of Sections 23 to 25 but still the court has to keep in mind that value of the agricultural land has been rising even in Delhi rapidly and the legislative protection provided under the Statute do not completely provide a safeguard to the citizens in a democratic set up which would satisfy the constitutional mandate of due process and its implied facets. A Division Bench of this court in the case of Pt. Jai Ram Singh v. UOI and others AIR 1989 Delhi 310 held that the transactions of adjoining villages can also be good guide when instances are not available in village itself. This view has met the approval of the Supreme Court as well as followed by different Benches of this court. We may also notice here that there is a contrary view taken in some of the judgments of the High Court as well as by the Supreme Court in the case of Kanwar Singh & others v. UOI JT 1998 (7) SC 397 holding that instances of adjoining villages cannot be taken to be of great evidentiary value in determining the market value of the land in question. But in those cases the sale transactions of the acquired land were available and therefore recourse to the transactions in adjoining villages was sought to be not proper.

Be that as it may, in the present case, there is admittedly no evidence led by either of the parties in regard to the transactions in relation to the acquired land. Thus, the court has to rely upon transactions of the adjacent villages which can be treated, as already said, as relevant piece of evidence but no determinative factors. Ex.PW1/A certainly relates to a developed area of industrial sheds, thus would not be completely comparable instance. This

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only gives an idea to the court what was the value of the adjacent lands nearly 16 years prior to the date of acquisition. There is no dispute to the fact that the industrial sheds in question are developed areas though they are adjacent to the acquired land. As already noticed, the Collector has already granted compensation to the claimants while the sheds were offered @ Rs. 650 per sq.m. How much amount has been spent on development and what are the components of this figure is not on record. Thus, the court has to apply only a guess work to find out whether the amount awarded by the Collector was a just and fair market value of the land at the time of its acquisition.

Learned counsel appearing for the respondents while relying upon the judgment of the Supreme Court in the case of Bhim Singh and others v. State of Haryana and another AIR 2003 SC 4382 contended that the developed land and sheds cannot be taken into consideration for determining the fair market value of the acquired land which was agricultural land. He also contended that the land users of the land falling under the Narela residential scheme and Bhorgarh industrial scheme are even otherwise distinguishable as the value of the land would be different particularly because of the fact that prior to allocation of sheds the user of the land was changed under the development plan in accordance with Section 12 of the DDA Act. On the contrary, the learned counsel appearing for the claimants while relying upon the judgment of the Supreme Court in the case of OM Prakash (D) by Lrs. and others v. Union of India and another 2004 VIII AD (SC) 37 stated that there is hardly much of difference between the land of two villages as there was hardly any change of user despite such notification. In support of his contention he relies upon para 8 of the judgment in OM Prakash' case (supra) which reads as under:-

"8. While the claimants-appellants urged that after the notification issued on 8.12.1982 the lands in question had acquired great commercial potentiality and that this fact had

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been lost sight of by the High Court in assessing the fair market value as on the date of the notification under Section 4 of the Act, the learned counsel for the Union of India contends that, despite the change in the master plan, there was hardly any change in the land user between 8.12.1982 and 2.6.1983 when the notification under Section 4 of the Act was issued. The land had been continued to be used for agricultural and allied purposes and there was no commercial exploitation of the land at all despite it being allowed as a result of change in the master plan."

This controversy is really of not much relevance and significance for determining the controversy in the present case as even according to the claimants themselves the land in question was being used for agricultural purposes even on the date of acquisition. But still the fact remains that the surrounding areas of this land had already developed into industrial or residential schemes as back as in the year 1980 and 1993 respectively. The cumulative effect of the above discussion is that it can safely be stated that the land in question had potential or had been developed into residential or industrial place. It had metalled roads and as such they would be entitled to some higher compensation than the one awarded by the Collector."

28. Reference can also be made to a recent judgment of this Court in the case of Jas Rath Vs. Union of India (RFA No. 751/94 decided on 27th April, 2006) wherein the potential of the land was discussed at great length. The relevant portion of the judgment reads as under :-

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" The potential of the land would include in its ambit the utility, likely output and its user as residential, commercial or industrial. The potential of the land has to be seen as on the date of the notification but the potential of the surrounding land adjacent to the acquired land would have some bearing. Potentiality of the acquired land in terms of future may not be very relevant but it must be kept in mind that as on the date of notification do the schemes of development have any provision for acquisition of the land. In the case of Sarwan Singh and Others Vs. State of Punjab and Others (1975) 1 SCC 284 the Supreme Court while taking a view that post notification sale instances are not very relevant for determination of market value but in regard to the potential and effect of development schemes held as under :-

"..... It is well-known that once a notification for acquisition is published people start upon various speculations and the future potentiality of the land becomes very important and that affects the price of the land sold in the area sought to be acquired or in close proximity to it and this rise in potential value has a definite connection with the issuance of the notification for acquisition of the land. The sale that takes place after the date of a notification under Section 36, as distinct from one under Section 4 of the Acquisition Act, cannot be taken as a reasonable guide for determination of compensation under Section 23 of the Acquisition Act as amended by the Improvement Act. The Tribunal has, therefore, not adopted any unreasonable principles in ignoring the sales that have taken place after the date of notification under Section 36."

Similar view was also expressed by the Supreme Court in the case of The Special Land Acquisition Officer, Karnataka Housing Board & Ors Vs. P.M. Mallappa & Ors JT 1997 (4) SC 191 wherein the Court held as under:-

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"5.....The potential value shall be determined for the land existing as on the date of the notification and not after subsequent developments have taken place."

Signifying the importance of potential factor in determination of the market value, a Division Bench of this Court in the case of Sh. Prabhu Dayal. (deceased by LRS) and others Vs. Union of India, New Delhi and another AIR 1984 DELHI 406 held as under :-

"Potentiality is also a true element of the market value. The value of the land has to be determined in its actual condition at the time of expropriation with all its existing advantages and with all its future possibilities. The land in question has potential value as building sites. There is not the slightest reason for not giving to the owner the benefit of potential value."

Future user by itself in terms of judgment of the Supreme Court in the case of Rajashekar Sankappa Taradandi and Others Vs. Assistant Commissioner and Land Acquisition Officer and Others (1996) 9 SCC 642 may not be of great significance but while determining the market value of the land, potential and location of the land, which would obviously include the effect of surrounding developed areas adjacent to the acquired land as well as declaration of development activities on the acquired land will have to be looked into by the Court.

The location of the acquired land is another important aspect. What is the location of the land, it is surrounded by what kind of land, whether there are roads or not and to what use the land could be put as part of the general development of the area would need to be examined by the Court during such proceedings....."

"Thus, it can safely be concluded that the land in

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question had a declared potential and user as residential and its location was near the roads of the developed areas in accordance with Master and Zonal Plans of Delhi."

29. It cannot be disputed that the land of Village Holambi Kalan is touching the part of the boundary of Village Bawana. The boundary of two villages is adjacent and their location is shown by the larger development plan under the Master as well as Zonal Plans read in conjunction with the statements of the witnesses as afore-referred. It is further sufficiently indicated and established on record that potential of acquired land had industrial, commercial and residential potential as on the date of acquisition as per the policy, plans and concept of development already declared and partially implemented by the respondents or other Government Departments.

30. The counsel appearing for the appellants have even before this Court heavily relied upon the case of Jai Lal (dead) through Lrs v. UOI 94(2001) DLT 429, which according to them was upheld by the Supreme Court in Om Prakash (D) by LRs Vs. Union of India 2004 (3) RCR 726. In the case of Jai Lal, the Supreme Court had determined the market value of land in relation to village Holambi Kalan as on 2nd June, 1983 @Rs.82,255/- per bigha. On this basis, the claimants claim that they are entitled to annual increase @12% compounding for the intervening period of 13 years as the notification in the present case was issued in the year

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1996. On this basis they pray that compensation be enhanced to Rs.2,41,500/- per bigha. This claim of the claimants was denied by the reference Court for the reasons that in the case of Union of India Vs. Amar Singh (RFA 464/88 decided on 7th February, 2003), the market value of the land as on 25th October, 1979 was determined @Rs.38,300/- per bigha in relation to Village Bhorgarh. Secondly it was stated that in the case of Jai Lal, the land rate was fixed keeping in mind the fact that the land use was changed from agricultural to Warehousing and storage on 8th December, 1982 i.e. prior to issuance of Notification under Section 4. Amar Singh's judgment was stated to be later in point of time. For this reason, the claim of the claimants was denied.

31. In the present case, Exh.M-1 clearly shows that user of the acquired land was already commercial, industrial and it called for no change because the Master Plan of 1990 was applicable and the development was expected to be carried out in terms thereof at least in the year 2001. In fact the witnesses of the claimants have clearly stated that for development, the work was carried out even in the year 2004. Keeping this aspect of the case in mind, the claimants would be entitled to rely upon the case of Jai Lal as the main distinguishing feature pointed out by the learned Reference Court is not supported by the records and

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the statements of the witnesses.

Market Value of the acquired land and what relief the petitioners can be granted

32. We have already held that principles of categorisation of land was not properly invoked in the present case and in fact there was no evidence to substantiate the same. The land in the Revenue Estate of Village Bhawana was agricultural land having commercial and residential potential as on the date of acquisition. Jai Lal's case as approved by the Supreme Court in Om Prakash case, thus, have a bearing on the matter in controversy. The Supreme Court in the case of Om Prakash held as under:-

"11. In the circumstances, the High Court was justified in working out the fair market value of the lands in question on the basis of Rs.16,750/- per bigha as on 30.10.1963. the High Court noticed that in several judgments of this Court escalation at different and varying rates i.e. 6% per annum from 1959 to 1965, @10% per annum for every year from 1966 to 1973 AND @12% per annum from 1975 had been considered to be reasonable increase to arrive at the fair market value, assuming that the pace of escalation during this period was normal for the entire period from 1959 onwards. Since no material was placed on record to show that there was any abnormality during the period, the High Court applied the same principle to the facts and circumstances before it, and accepted increase of 10% every year progressively from 1963 to 1973 and thereafter @12% every year progressively upto the date of acquisition. The High Court noticed in the judgment

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that if escalation is allowed on this basis, the fair market value would be Rs.1,28,889/- per bigha. In case progressive increase is allowed @10% for the entire period, the amount will work out to Rs.1,08,397/- per bigha. Allowing appreciation @12% for every year, not cumulatively, but at a flat rate of 12% per annum from 1963 to 1983, the amount would work out to Rs.56,112/- per bigha. The High Court in its judgment under appeal pointed out that the market value of Rs.16,750/- per bigha fixed in the case of Dharambir & Ors. v. Union of India was not in respect of commercial land but only of agricultural land.....

12. Having heard the learned counsel and perused the judgment, we find it difficult to disagree with the exercise carried out by the High Court. We think that the High Court was justified in assessing the market value at a higher rate on account of some increased potentiality of the lands. If at all, the High Court has erred on the safer side in fixing the market value at Rs.82,255/- per bigha. In the circumstances, we are unable to accept the contention advanced by the claimants-appellants and the Union of India in their respective appeals. Taking an overall view of the matter, we are satisfied that the judgment of the High Court requires no interference under Article 136 of the Constitution of India."

33. The result of the remand order passed by this Court has not added any new dimensions to the present case inasmuch as the appellants have not pressed determination of market value on the basis of agricultural yield. Furthermore, similar stand was taken in regard to the sale deeds. In fact only one sale deed was proved and placed on record being Exh.DXR1. The appellants again took the stand that they were not placing reliance on this sale deed as well for claiming compensation. In

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fact the present case is of no evidence as far as determination with reference to sale deed of comparable instances and agricultural yield are concerned but in any case both these pleas have not been pressed before us.

34. There is evidence on record to show that the acquired land was surrounded by different villages like Khera Khurd, Sanot, Daryapur and Holambi Kalan and for which a compensation had been determined by the High Court and in the case of Om Prakash even by the Supreme Court of those lands relating to different point of times. The location and potential of the land as afore-discussed cannot be ignored by the Court. In the case of Special Deputy Collector & Another Vs. Kurra Sambasiva Rao & Ors., AIR 1997 SC 2625 the Supreme Court has stated that object of assessment is to arrive at reasonable and adequate market value of the land and some guess work in this process is to be involved. The claim of compensation can neither be awarded on imaginary basis or anticipated benefits of the criteria nor could it be done with arithmetical calculation. The land fallen in the revenue estate of Village Holambi Kalan are quite closed to the acquired land and the Court in the case of Gajraj Singh determined the compensation in favour of the claimants @Rs.9,76,121/- per acre for the lands falling in category A and

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@Rs.9,51,121/- per acre for the lands falling in category 'B'. The categorisation of the land was upheld in that case because the Court had specifically noticed that it was the case of no evidence by the claimants and during the course of arguments of that case, counsel appearing for the appellants had not been able to show that the lands were not having Gaddas, pits or Bhattas as recorded by the Collector and even stated in the revenue record. (emphasis supplied by us).

35. In the present case, there is no evidence led by the respondents, which could bely the stand of the claimants that the order directing categorisation of land is not correct. Further that the same is supported by no evidence. It is pertinent to notice that direct evidence placed by the petitioners on record by way of Exh. PWR6/A and PWR6/B clearly show that the land in Village Holambi Kalan was in a bad shape and nearly Rs.75 lakhs were spent by the Corporation for filling the earth and developing that area in addition to normal development expenses. In this document there is no reference to any expenditure incurred in filling up the alleged pits and gaddas of the land in the Village Bawana.

36. Keeping in view this material piece of evidence, it needs to be seen as to what is the effect of this aspect on the market value of the land

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fallen in the revenue estate of Village Bawana. In the case of Gajraj (supra), the Court held as under :-

"There are three judicial pronouncements which from time to time have determined the fair market value of the land in village Bhorgarh. In the case of Union of India v. Amar Singh RFA 464/88 and other connected appeals, decided on 7.2.2003, which related to the acquisition of the land by issuance of a notification under Section 4 of the Act for acquiring the land in village Bhorgarh for development of Narela Industrial Area, the High Court had granted compensation @ Rs. 38,300/- per bigha. As this judgment of the High Court was pronounced on later point of time it had also considered the judgment in the case of Jai Lal (dead) through Lrs v. UOI 94(2001) DLT 429 where for notifications issued on 1st and 2nd June, 1983 for acquisition of land in the revenue estate of the same village, the High Court had granted compensation @ Rs. 82,255/- per bigha. Still another notification was issued for acquisition of land in village Bhorgarh for acquiring a land measuring about 52 acres for construction of godowns for Food Corporation of India etc. in the village Bhorgarh and the other two villages and the Supreme Court approved the grant of compensation to the claimants @ Rs. 82,255/- per bigha. as in 1979 as well as in 1982-83 the Government intended to acquire lands from the Revenue estate of village Bhorgarh and they were agricultural lands. It was noticed that in the case of Jai Lal (supra), long gap of 19 years was supplied by giving annual increase by compounding it on per annum and the enhancement of compensation given by the High Court was approved by the Supreme Court in para 11 of the judgment in Om Prakash's case (supra) which reads as under:-

"11. In the circumstances, the High Court was justified in working out the fair market value of the lands in question on the basis of Rs. 16,750/- per bigha as on 30.10.1963. The High Court noticed that in several

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judgments of this Court escalation at different and varying rates i.e. 6% per annum from 1959 to 1965, @ 10% per annum for every year from 1966 to 1973 and @ 12% per annum from 1975 had been considered to be reasonable increase to arrive at the fair market value, assuming that the pace of escalation during this period was normal for the entire period from 1959 onwards. Since no material was placed on record to show that there was any abnormality during the period, the High Court applied the same principle to the facts and circumstances before it, and accepted increase of 10% every year progressively from 1963 to 1973 and thereafter @ 12% every year progressively upto the date of acquisition. The High Court noticed in the judgment that if escalation is allowed on this basis, the fair market value would be Rs. 1,28,889/- per bigha. In case progressive increase is allowed @ 10% for the entire period, the amount will work out to Rs. 1,08,397/- per bigha. Allowing appreciation @ 12% for every year, not cumulatively, but at a flat rate of 12% per annum from 1963 to 1983, the amount would work out to Rs. 56,112/- per bigha. The High Court in its judgment under appeal pointed out that the market value of Rs. 16,750/- per bigha fixed in the case of Dharmbir & Ors. vs. Union of India was not in respect of commercial land but only of agricultural land. That the market value of agricultural land is much lower than that of land suitable

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for commercial purposes, is trite. After having worked the market value of the lands on various bases and keeping in view the fact that between 8.12.1982 and 2.6.1983, the lands in question had at least some commercial potentiality, the High Court decided that the fair market value of all categories of lands situated in the villages in question as on the date of acquisition should be fixed at Rs. 82,255/- per bigha."

The learned counsel appearing for the respondents while re-agitating the fact that instances given of industrial sheds of the village Bhorgarh cannot be taken into consideration, also argued that the judgments in the case of Om Prakash (supra) and in other Bhorgarh cases, were after the land use had been permitted to be changed under the provisions of the DDA Act. It may be noticed that this argument raised apparently appears to be attracted of some substance but on proper examination of the submission, it hardly has any merit. Firstly in view of the judgment of the Supreme Court in Om Prakash's case (supra) and secondly the fact that in the case of Amar Singh (supra) the land was acquired on 20.10.79 while the notification was issued by the DDA under Section 11A of the Act, as stated, on 8.12.82. It is clear from the various judgments which are judicial precedents in relation to the land situated in the revenue estate of Bhorgarh adjacent to the acquired land that the same had received compensation of Rs. 82,255/- per bigha for acquisition of the land in the year 1982, then by any standards, the present claimants are certainly entitled to enhancement at least of some compensation for compulsive acquisition of their lands which was also their livelihood. Learned counsel appearing for the claimants also

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pointed out an apparent error in the award of the Collector as well as in the judgment of the reference which is apparent on the face of the record. It was argued that the Collector in his award had held as under:-

"In view of the absence of any documentary evidence on record to the contrary, I find Rs. 10.00 lakhs per acre to be the most reasonable price for best kind i.e. The land falling in 'A' block as on 1.4.97. Since originally, it was proposed to increase the price of land @ 10% per annum on and above the price of Rs. 4.65 lakhs per acre (fixed by previous decision of govt. of National Capital Territory of Delhi which came into effect from 27.4.90) but finally decision was taken to round it off to Rs. 10.00 lakhs per acre which effectively gives an increase of about 11.5% per annum compounded. Since the notification under Section 4 was issued on 15.11.96 and the price of the land is to be determined on the date of notification under section 4 itself therefore, I have given a compounded increase of about 11.5% per annum upto the financial year 1996-97 and I, accordingly, determine the market value of the 'A' Block land @ Rs. 8,95,200/- per acre or Rs. 1,86,500/- per bigha.

As far as assessment of land falling in 'B' Block is concerned, attention is required to be paid to the quality of the land. As stated earlier, this land has 'Gadhas' and 'Bhatta Ground'. From this land earth has been taken out for making bricks. It is the general practice to lease out the land to the Bhatta owners who removes earth from the land for making bricks, for a consideration. Thus the landowners have already got some

compensation for their land, which has now become of inferior quality. For the assessment of this inferior land, it would be appropriate here that landowners should not be given the amount which they have already received in consideration of removal of earth from their land. For arriving at this amount, inquiries were made and it came to my notice that for removing earth up 3-4 feet Rs. 1.20 lakh to 1.30 lakh per acre is paid as lease consideration. In a recent award No. 1/97-98 of village Bawana announced by the undersigned on 4.7.97, I have given a deduction of rs. 1.20 lakh per acre in the market value of 'B' Block land from that of 'A' block land.

As such, I assess the market value of 'A' block land @ Rs. 7,75,200/- per acre or Rs. 1,61,500/- per bigha.

In addition to the market value fixed above, land owner will be entitled to all other benefits as per the provision of the Act."

This also had the approval of the reference court. The apparent defect in the award is that while giving benefit by adding the value of the land @ 11.5% per annum, no benefit has been given to the claimants for the period from 1.4.96 to 15.11.96, the date of acquisition of their land. Seven to eight months is a material period for considering the benefit to be given on an immovable property in the case of compulsive acquisition. The reference court as well as the Collector have accepted that the claimants would be entitled to the advantage in increase of price of their lands @ 11.5 % compounded annually as the original price under the old policy was fixed @ Rs. 4.65 lacs per acre w.e.f. 1.4.90. While, it was raised to Rs. 10 lacs per acre w.e.f. 1.4.96. This error is

manifest in the impugned judgment and in the award of the Collector. The claimants have been given compensation @ Rs. 8,95,200/- per acre while they should have given compensation at the rate computed as per the Collector's award even if maintained @ Rs. 9,49,173/- per acre. In terms of the judgments of the High Court and as approved by the Supreme Court in Om Prakash's case (supra) and by the High Court in Jai Lal's case, the claimants would certainly be entitled to higher compensation than the one awarded by the reference court. On the basis of Om Prakash and Jai Lal's case (supra), the acquisition of land in Bhorgarh village as in 1996, if acquired, would be @ Rs. 4,01,989/- per bigha i.e. nearly more than Rs. 16 lacs per acre. Even if the land of village Hulambi Kalan is treated inferior to that of Bhorgarh, the claimants would be entitled to higher compensation making a deduction for better location and potential in comparison to the acquired land. In furtherance to the judicial pronouncements giving a deduction of 40% on the judicial pronouncements relating to Bhorgarh and with the above recorded benefit @ 12% annually compounded, the claimants would be entitled to receive a sum of Rs. 10,03,364/- per acre. On the basis of Ex.PW1/A if it is taken to be of some evidential value and the reasonable deduction is made on account of industrial development of the sheds in village Bhorgarh @ 25 % from the rate of 260 per sq.m. and giving some adjustments on account of sq.yds. or sq. meters, the claimants would get nearly Rs. 9,75,000/- per acre.

As we have already discussed that even on the basis of agricultural produce relating to the acquired land, the claimants would be entitled to higher compensation @ nearly Rs. 9,50,000/- per acre.

Thus, viewed from different angles i.e. computation relating to agricultural yield, computation based on judicial pronouncements of

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adjacent village and after correcting an error which has crept in the judgment of the Collector and the reference court with reference to the policy given by the Government in relation to agricultural land in case of acquisition i.e. Policy dated 1.4.97, the claimants are entitled to more or less the same compensation. Deducting the mean of the above three figures, the fair market value of the acquired land can reasonably be concluded at Rs. 9,76,121/- per acre. Thus, we would award the said amount of compensation to the land owners/claimants.

It is not disputed before us that there is another error in the judgment of the reference court and the Collector that the claimants have not been awarded interest as in terms of the provision of the L.A. Act on the solatium as well as the benefit available to the claimants in terms of Section 23(1)(a) of the Act. Learned counsel appearing for the respondents fairly stated that the claimants would be entitled to the said benefit. However in the facts and circumstances of the case, we do not propose to interfere with the concurrent finding recorded by the reference court and the Collector in regard to grouping of lands. In the award, it was recorded that there is 'B' group land where there are gaddas and bhattas being run by the owners. No evidence was brought on record by any of the claimants to show that the said finding is incorrect. The claimants in whose land there are gaddas and bhattas are being run, have already earned enough from those lands and thus are bound to suffer certain disadvantage and cannot argue that their land should be treated identically to the agriculture lands which were bearing crops at the relevant time and had a higher level of water as well as earth. Thus we do not propose to interfere with the grouping of land into two different sections i.e. Group A and Group B. Because of lack of evidence by the claimants, we approve the order of the reference court maintaining marginal difference in awarding compensation to

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these two categories of lands in the same ratio.

In view of our above detailed discussion, we partially allow these appeals of the claimants and hold that:-

1. The claimants would be entitled to get compensation @ Rs. 9,76,121/- per acre for the lands falling in category 'A' and Rs. 9,51,121/- per acre for the lands falling in category 'B'."

37. As far as the enhancement of the awarded compensation on the ground of agricultural yield is concerned, we have already noticed that the appellants have not pressed that ground and as such they are not entitled to any enhancement on the basis of agricultural yield.

38. There is hardly any evidence led by the parties by way of sale instances. The only sale deed which was on record was Ex.DXR-1. However, the photocopy of this sale deed which was placed on record was subsequently denied by the claimants themselves. The claimants themselves pleaded that it was a sham transaction and thus, would be irrelevant for determining the market value of the land. Though, the trial court rejected this contention of the claimants but mainly relied its judgment upon other judgments particularly the judgment of the court in relation to acquisition of the land in Village Holambi Kalan, which is admittedly an adjacent village. After discussing the various judgments

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and even the sale deeds referred in the judgments/judicial instances which had been placed on record, it declined to enhance the compensation payable to the claimants and maintained the order of the Collector. As far as the sale deed Ex.DXR-1 is concerned, vide this a land measuring about 4 bighas 5 biswas was sold for a sum of Rs.60,000/- on 13.8.1996. As per this exhibit, the rate of land per bigha would come to nearly Rs.14,117/-. This amount can no way be considered even relevant for determining the compensation payable to the claimants as the Collector himself has given much higher value which cannot be disturbed by the Court. Thus, this document need not be discussed in any further detail in the judgment. It has come in evidence that the land of Village Holambi Kalan was acquired on the same date, was inferior and is adjacent to the land in question in the present appeals. In the appeals relating to acquisition of land in Village Holambi Kalan, the Court had given definite benefit to the claimants after considering all the relevant evidence produced by the parties as well as the judicial instances referred in that case. One of the main distinction in the two cases is that in that case the claimants had led no evidence to question the classification of the land, while in the present cases, there is ample evidence to support the contention that the order of the Collector in this regard was totally unjustified. The location and potential of the lands in question is better than the lands of Village

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Holambi Kalan. The evidence in this regard has been discussed by us in great detail.

39. In the case of Gajraj Singh (supra) the Court while granting very limited enhancement again because of non-availability of proper and cogent evidence, it specifically granted the relief of interest on solatium and the benefit for a period of 7 to 8 months in computation of market value of the land on the basis of the Government Policy. It again may not be necessary for this Court to reiterate the entire discussion on this aspect of the case. In fact the learned counsel appearing for the respondents did fairly state that these two reliefs, the petitioners would be entitled to and more particularly in view of the judgment of this Court in Gajraj Singh case.

40. It was for the claimants to produce on record the relevant and cogent evidence by sale instances, judicial pronouncements, which would considerably support their case for enhancement of compensation. The claimants have failed to completely discharge their onus on this issue and claim on the basis of agricultural produce having been given up, there is hardly any basis for the claimants to claim enhancement in compensation for acquisition of their land, on their own strength. The policy of the Government in relation to grant of minimum price payable for acquisition of agricultural land would continue to be the relevant factor on the basis

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of which, the Court would have to determine the compensation payable to the claimants. The categorisation of land has weighed heavily with the Collector and even the reference Court in providing different market value for the acquired land. In fact the Collector on a wrong assumption has noticed in his award that inferior quality of land relating to alleged pits and gaddas to the depth of 3 fit were there on the land and expenditure was incurred in filling up the same, therefore, the value of category B land has been fixed at a lower rate. The Collector or the Court could arrive at these findings only on the basis of evidence on record. As already noticed, there was no evidence before them on record of the case file. The respondents have failed to support the findings of the Collector in regard to categorisation of land in the revenue estate of Village Bawana by any reliable, cogent and admissible evidence.

41. In view of our afore discussion, we are of the considered opinion that the judgment under appeal to some extent suffers from factual and errors or law. As a Court of appeal, these errors must be corrected. We hold that the claimants are entitled to the following reliefs:-

- (a) The order maintaining the categorisation of the acquired land into groups A and B is set aside. All claimants, whose lands have been acquired vide notification dated 15th November, 1996 in the revenue estate of Village Bawana would be entitled to uniform rate of compensation.

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- (b) The claimants would be entitled to increase in the awarded amount of compensation from 1st April, 1996 to 15th November, 1996 (the date of notification under Section 4 under the Act) @11.5% compounded annually on the compensation awarded by the Reference Court/Collector that would roughly give them total enhanced compensation of Rs.1,99,904.68p. per ~~acc. Brijal~~
- (c) The claimants are entitled to interest on the amount of solatium for the period for which they have not been paid interest in accordance with law.
- (d) The claimants would be entitled to all the benefits of interest and statutory payments under the provisions of the Act including Section 23(1-A) of the Act on the enhanced compensation.
- (e) The claimants would also be entitled to proportionate costs.
41. The appeals are disposed of in the above terms.

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SWATANTER KUMAR
(JUDGE)

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S.L.BHAYANA
(JUDGE)

May 11, 2006
sk/vk